



November 29, 1999

Mr. Michael S. Wenk
Criminal District Attorney
Hays County Justice Center
110 E. Martin Luther King
San Marcos, Texas 78666

OR99-3416

Dear Mr. Wenk:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 129314.

The Hays County Criminal District Attorney (the "county") received a request for "information on the surety levels of all bonding companies currently listed with Hays County Sheriffs [sic] Office." In response to the request, you submit to this office for review the information which you assert is responsive. You represent that "[i]t is Hays County's position that Section 552.110 of the Texas Public Information Act, which excepts the disclosure of trade secrets, commercial information or financial information, may be applicable in this case." We have considered the arguments which may be applicable and reviewed the submitted information.

Section 552.305 of the Government Code requires a governmental body to make a good faith attempt to notify a person whose proprietary interests may be affected by a request for information. Based on the submitted information, this office is unable to determine whether the county, in compliance with section 552.305, notified all third parties whose interests are implicated by the pending request for information. Pursuant to section 552.305 the notice to the third party must:

- (1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and
- (2) include:

(A) a copy of the written request for the information, if any, received by the governmental body; and

(B) a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:

(i) each reason the person has as to why the information should be withheld; and

(ii) a letter, memorandum, or brief in support of that reason.

Gov't Code § 552.352 (distribution of confidential information is criminal offense). Since most of the companies did not submit to this office any reason to withhold the requested information, our office cannot conclude that the requested responsive information is excepted from public disclosure. *See* Open Records Decision No. 552 (1990). Accordingly, we have no basis to conclude that the information is excepted from required public disclosure; therefore, the information about these companies may not be withheld under section 552.110. However, one of the companies, "A-OK" Zamora Bail Bonds ["A-OK Bail Bonds"], through the company president, submitted a letter implicating section 552.110 of the Government Code.¹ Thus, we will consider whether the information concerning A-OK Bail Bonds is excepted from disclosure under the claimed exception.

The Seventy-sixth Legislature amended section 552.110 of the Government Code. Act of May 25, 1999, 76th Leg., R.S., ch 1319, § 7, 1999 Gen. Law. 4500, 4503 (effective September 1, 1999). Section 552.110 now reads as follows:

(a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.

(b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.

¹Information is not confidential under the Public Information Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

This section protects the property interests of private persons by excepting from disclosure two categories of information: (1) “[a] trade secret” and (2) “commercial or financial information.” This office cannot conclude that information is a trade secret unless the governmental body or company has provided evidence of the factors necessary to establish a trade secret claim.² Open Records Decision No. 402 (1983). Facts sufficient to show the applicability of these factors have not been provided. *See* Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information). Therefore, the requested information is not excepted from disclosure under the trade secret prong of section 552.110.

We next consider whether the information at issue constitutes “commercial or financial information.” Commercial or financial information is excepted from disclosure under section 552.110(b). In the submitted letter, A-OK Bail Bonds’ owner summarily states that “[the company] does not wish to divulge [the company] business info [sic] to anyone not pertaining to the sheriff’s department in Hays Co.” However, commercial or financial information may be withheld under section 552.110(b) only if “it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” In this instance, neither the county nor the third party has provided “specific factual evidence that disclosure would cause substantial competitive harm” to A-OK Bail Bonds.³ Therefore, the requested document may not be withheld from disclosure under section 552.110(b) of the Government Code. Accordingly, we conclude that the requested list is not excepted from disclosure pursuant to section 552.110 of the Government Code.

²The following criteria determines if information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company’s] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS, *supra*; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

³Section 1 of article 2372p-3, V.T.C.S., provides that “[t]he business of executing bail bonds is declared to be a business affecting the public interest.” Additionally, the responsive information appears to have been required to be filed with the county pursuant to article 2372p-3. *See generally Apodaca v. Montes*, 606 S.W.2d 734 (Tex. Civ. App.--El Paso 1980, no writ).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Sam Haddad". The signature is written over the word "Sincerely," and the printed name "Sam Haddad".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 129783

Encl. Submitted documents

cc: Ms. Nina Russell Stanfield
AAA Bail Bonds
2970 W. San Antonio Street
New Braunfels, Texas 78130
(w/o enclosures)

Mr. Barry P. Hitchings
Hitchings & Pollock
645 S. Presa
San Antonio, Texas 78210
(w/o enclosures)

Bondco Bail Bonding
1702 I.H. 35
San Marcos, Texas 78666
(w/o enclosures)

Mendez Bail Bonding
200 E. Market
Lockhart, Texas 78644
(w/o enclosures)

AAA Bail Bonding
P.O. Box 310187
New Braunfels, Texas 78231
(w/o enclosures)

Jam Bail Bonding
P.O. Box 753
Kyle, Texas 78640
(w/o enclosures)

AA Amigo Bail Bonding
1702-B I.H. 35 North
San Marcos, Texas 78666
(w/o enclosures)

Rudy's Bail Bonding
221 Blanco Road
Wimberley, Texas 78676
(w/o enclosures)

Best Bail Bonds
221 Blanco Road
Wimberley, Texas 78676
(w/o enclosures)

Central Texas Bail Bonds
114 C. M. Allen Parkway
San Marcos, Texas 78666
(w/o enclosures)

Fact Action Bail Bonds
121 Cascade Trail
San Marcos, Texas 78666
(w/o enclosures)

E-Z Bail Bonds
P.O. Box 9500-111
San Marcos, Texas 78666
(w/o enclosures)

A Plus Discount Bail
1011 Uhland Road #70
San Marcos, Texas 78666
(w/o enclosures)

Babe's Bail Bonds
1702 I.H. 35 North
San Marcos, Texas 78666
(w/o enclosures)

A-OK Zamora Bail Bonds
155 S. LBJ
San Marcos, Texas 78666
(w/o enclosures)